

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

RICKY ORLANDO NICHOLS,)	
)	
Petitioner,)	
)	1:14-CV-482
v.)	1:04-CR-424
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

ORDER

The Recommendation of the United States Magistrate Judge was filed in accordance with 28 U.S.C. § 636(b) and, on January 28, 2016, was served on the parties. (Docs. 71, 72). The petitioner filed a document entitled “Petitioner’s Traverse/Reply to United States Magistrate Judge’s Recommendation; and Motion to Supplement Motion under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody.” (Doc. 82). The petitioner has made no real argument in opposition to the Magistrate Judge's conclusion that the *Simmons*-based claims are barred by *United States v. Foote*, 784 F.3d 931 (4th Cir. 2015). (See Doc. 58).


In the same document, Mr. Nichols has moved to supplement his 2255 motion to add a claim for relief under *Johnson v. United States*, 135 S. Ct. 2551 (2015). (See Doc. 82). While this claim would likely be precluded under current Fourth Circuit law, see *Foote*, 784 F.3d 931, the Supreme Court has granted certiorari to decide whether *Johnson* applies retroactively to collateral cases challenging federal sentences enhanced under the residual clause of § 4B1.2(a)(2) of the Sentencing Guidelines. See *Beckles v. United*

States, 2016 WL 1029080 (June 27, 2016). Therefore the Court will stay resolution of Mr. Nichols' motion to supplement his § 2255 motion pending a decision in *Beckles* or other guidance from the Fourth Circuit.

IT IS THEREFORE ORDERED that:

1. The Court adopts the reasoning of the Magistrate Judge as to all matters raised in Mr. Nichols' original § 2255 motion. (*See* Doc. 71, recommending dismissal of motion at Doc. 58).
2. A ruling on Mr. Nichols' motion to supplement his § 2255 motion to add a *Johnson* claim, (Doc. 82), is **STAYED**, pending a decision in *Beckles* or other guidance from the Fourth Circuit, subject to further order of the Court.
3. The Federal Defender is appointed to represent the defendant in connection with his *Johnson* claim and, upon developments in the appellate court, shall file such motions or other pleadings as may be appropriate.

This the 1st day of July, 2016.


UNITED STATES DISTRICT JUDGE